

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re** ) Chapter 11  
 )  
**W. R. GRACE & CO., et al.** ) Case No. 01-1139 (JKF)  
 ) Jointly Administered  
**Debtors.** )  
 ) **Re: Docket No.: 22491**

**CERTIFICATION OF COUNSEL RE: ORDER  
REGARDING LIBBY CLAIMANT TESTIMONY**

1. On July 17, 2009, Arrowood Indemnity Co. filed *Arrowood's Motion for Relief Against the Libby Claimants Based on Their Designation of Over 100 Witnesses for the Confirmation Hearing* (Docket No. 22491) with the United States Bankruptcy Court for the District of Delaware (the "Court"), 824 Market Street, Wilmington, Delaware 19801. The Court heard oral objections from the Libby Claimants at the July 27, 2009 hearing.

2. The Court heard arguments on the motion (the "Motion") on July 27, 2009, and as a result of its ruling, requested that the parties prepare an order reflecting its ruling.

3. After conferring on August 4, 2009, the Debtors circulated a proposal to the Libby Claimants and Plan Proponents on August 5, 2009 addressing the various outstanding Libby related pre-trial and discovery issues, including the Motion. Subsequently, on August 7, 2009, the parties exchanged ideas and agreed upon a proposed order for most of the outstanding issues, other than issues relating to Libby individual claimant witness testimony, production, and depositions. That form of order is being submitted under a separate certification of counsel.

4. On August 10-11, 2009, the parties exchanged ideas concerning a proposed order for the remaining Libby individual claimant witness issues. The parties have agreed on substantially all of the issues presented. However, the parties have been unable to resolve one

issue raised today during the attorney conference related to the scope and contents of the proposed order. This issue has not been previously considered by the Court in pretrial proceedings. The issue relates to whether the Libby Claimants must identify any additional individual settlements where they intend to offer case-specific evidence. The Libby Claimants previously advised that they will offer the Plan Proponents' Responses to Requests for Admissions relating to the settlement amounts received by settled pre-petition plaintiffs. The Libby Claimants have also advised that they may offer evidence related to the nature and extent of disease at the time of settlement of these claims, during cross-examination of the Plan Proponents' witnesses or during the Libby Claimants' case in chief. The Libby Claimants submit that no further discovery is warranted on this matter. Grace does not agree and intends to submit an order that is identical in all respects to the attached order (paragraphs 1-8 are identical), except for an additional paragraph addressing this matter.

5. The Libby Claimants respectfully request that the Court enter the proposed order regarding the Libby individual claimant testimony issues attached hereto as Exhibit A. In the alternative, because the Libby Claimants do not agree with the additional relief requested in the Plan Proponents' competing order and submit that the scope and nature of the additional relief requested is not clear, the Libby Claimants request a telephonic hearing be scheduled at this Court's convenience to hear argument on the competing orders presented to this Court.

Dated: August 11, 2009  
Wilmington, Delaware

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